

ADEL C. GORDEN,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-12

OPINION

Appellant, who was a tenured teacher with Prince George's County Public Schools (PGCPS), contests the local board's decision affirming the superintendent's recommendation to terminate Appellant for incompetence and insubordination. The local board's decision was based on the recommendation of the local hearing examiner. We sent this case to the Office of Administrative Hearings for review by an Administrative Law Judge (ALJ). The ALJ has issued a Proposed Decision recommending that the State Board affirm the local board's decision upholding Appellant's termination. Appellant has filed several exceptions to the ALJ's Proposed Decision. The local board has filed a response to those exceptions.

FACTUAL BACKGROUND

The ALJ has provided the factual findings in this case. The Findings of Fact are set out on pages 3 – 9 of the proposed opinion. We have highlighted below some of those findings.

Appellant had 30 years of teaching experience and was employed as a teacher with PGCPS beginning in 1999, but the 2003-2004 school year was Appellant's first year at Flowers High School where she taught biology. Findings of Fact ¶1.

During October 2003, Appellant received an informal classroom observation and a formal classroom observation that revealed deficiencies in her performance. These observations prompted the principal to issue an interim teacher evaluation on January 15, 2004, identifying several areas in which Appellant needed to demonstrate improvement. These areas are as follows:

- Creating a classroom climate that is warm and inviting;
- Involving students at all instructional levels in each lesson and encouraging the reception of inquiries, ideas and opinions that relate to those lessons from the students involved;
- Demonstrating fairness and consistency in the handling of student discipline;
- Maximizing the use of time for instructional purposes with all students being involved in meaningful learning activities;

- Demonstrating a keen understanding of the needs, concerns, abilities and interests of each student in such a manner that leads to the delivery of needed instructional or other resources; and
- Actively participating in program improvement activities.

The principal and Dr. Riddick, Regional Director, placed Appellant on an Teacher Interim Evaluation Action Plan (“action plan”) and met with Appellant to discuss what an action plan should contain. Appellant was asked to prepare an action plan to address the areas of improvement cited in the interim evaluation. Although Appellant prepared a plan, it did not appropriately identify the strategies discussed with the principal and Dr. Riddick. For example, the plan submitted by Appellant listed various complaints and failed to describe the activities that she planned to conduct in order to address the areas in which she needed improvement. *See* Appellant’s Action Plan (CEO Exhibit 7). Appellant failed to submit a revised action plan as requested. Findings of Fact ¶¶ 3 – 8.

In February and March 2004, Appellant continued to have performance issues as noted in her classroom observations. In addition, the February 2004 Grade Distribution Report indicated that 60% of Appellant’s students were failing her class while the average failure rate for all other classes at Flowers was 18%. Furthermore, Appellant filed many disciplinary referral forms with the administration regarding the behavior of students in her class. After a new teacher took over Appellant’s class on March 24, 2004, there were no disciplinary referrals and student performance increased significantly. Findings of Fact ¶¶ 9 – 14.

Appellant also had various incidents of insubordination during the 2003-2004 school year. Appellant failed to meet with and respond to school administrators as requested and failed to follow explicit directives. As a result, Appellant received various official reprimands for her actions. Findings of Fact ¶¶ 15 – 27.

On March 25, 2004, a letter from the principal was hand delivered to Appellant in her classroom directing Appellant to report to John Robinson in Labor Relations later that afternoon. The security officer delivering the letter placed it in front of Appellant on her desk after she refused to accept the letter. Appellant later learned of the meeting but refused to attend. The purpose of the meeting was to discuss reports regarding the Appellant’s incompetence and insubordination. Findings of Fact ¶¶ 28.

By letter dated March 26, 2004, Andre Hornsby, Chief Executive Officer (“CEO”), advised Appellant that he was recommending her termination to the local board. He stated as follows, in pertinent part:

I officially inform you herewith that unless you request to be heard on the charges against you, I will recommend to the Board of Education of Prince George’s County, that they accept my decision that you be terminated from your employment with Prince

George's County Public Schools, in accordance with the MD. ANN. CODE, Educ. Art., Sec. 6-202. The recommended termination is based upon my finding that you have not demonstrated your capabilities to perform classroom instruction in a satisfactory manner; that you have not demonstrated satisfactory professionalism; that you have not demonstrated effective teaching preparation; and you have been insubordinate to your supervisors on a number of occasions during the current 2003 – 2004 school year. Specifically, you received an unsatisfactory Interim Teacher Evaluation in January, 2004, and as a result, you were directed to complete an Action Plan for improvement in each area of the Interim Evaluation marked "needs improvement," which was to have been received not later than February 13, 2004. You have not completed and submitted that Action Plan.

Appellant was placed on leave without pay effective March 26, 2004. Findings of Fact ¶¶ 29.

Thereafter, Appellant filed an appeal of the CEO's termination recommendation. The local board referred the matter to hearing examiner Jerome Stanbury. After a full evidentiary hearing, Mr. Stanbury recommended Appellant's dismissal in accordance with the recommendations of the CEO. *See* Hearing Examiner Report. On April 7, 2005, the local board adopted the recommendation of the hearing examiner, thereby terminating Appellant from her employment with the school system. *See* Local Board Order.

This appeal to the State Board followed and the matter was referred to OAH for review of the termination decision by an ALJ.

ALJ'S PROPOSED DECISION¹

The ALJ recommends upholding the local board's termination of Appellant for incompetency and insubordination based on the preponderance of the evidence presented in this case. After reviewing the entire record and hearing arguments from the parties, the ALJ concluded that Appellant was incompetent in the delivery of instruction at Flowers High School and acted in an insubordinate manner on numerous occasions with her supervisors during the 2003-2004 school year.

The ALJ found sufficient evidence of Appellant's incompetency. He indicated that members of the administration who conducted classroom observations of Appellant during the 2003-2004 school year noted deficiencies in her performance including failure to fully engage her students, failure to command the full attention of her students, and demonstrated weakness in

¹The ALJ sets forth his analysis of the case in the Discussion section of the Proposed Decision which is set forth on pp. 9 – 16.

classroom management. In addition, the Principal documented Appellant's deficiencies in an Interim Teacher Evaluation, identifying those areas in which Appellant needed to demonstrate improvement.

The ALJ also noted that as a means to move toward improvement, the Principal requested that Appellant create an action plan to identify strategies to address her classroom management and instruction delivery weakness. The plan submitted by Appellant failed to appropriately identify those strategies. The Principal directed Appellant to resubmit a plan consistent with contents that were previously discussed at a meeting with Appellant, the Principal and Dr. Riddick, but Appellant failed to resubmit an appropriate action plan.

The ALJ found evidence of Appellant's continued deficient performance in the classroom evaluations dated February 18 and 24, 2004, and March 8, 2004. In addition, the ALJ found convincing the Principal's testimony which linked Appellant's high student failure rate to her inability to effectively engage her students in her lessons.

The ALJ found substantial evidence of acts of insubordination by Appellant. He cited the following examples of Appellant's disregard of directives from her superiors:

- Failure to attend a meeting with the Principal in October 2003 to develop a performance improvement plan;
- Failure to respond to a January 20, 2004 memorandum from Assistant Principal Wheeler regarding checking student identification;
- Failure to call a parent per written directive of Assistant Principal Summers on February 20, 2004;
- Failure to cover a class on March 12, 2004 pursuant to the request of Assistant Principal Williams;
- Failure to attend a parent conference on November 12, 2003 per the directive of Assistant Principal Summers.

The ALJ noted that Appellant received several reprimands for insubordination based on her actions.

With regard to Appellant's arguments against the termination, the ALJ found that Appellant failed to provide evidence to support her claims of harassment and procedural violations. Specifically, the ALJ found that the local board committed no violations of §6-202 of the Education Article.

LEGAL BACKGROUND

Section 6-202 of the Education Article, Annotated Code of Maryland, provides as follows, in pertinent part:

- (a)(1) On the recommendation of the county superintendent, a county board may suspend or dismiss a teacher, principal, supervisor, assistant superintendent, or other professional assistant for:
 - (I) Immorality;
 - (ii) Misconduct in office, including knowingly failing to report suspected child abuse in violation of §5-704 of the Family Law Article;
 - (iii) Insubordination;
 - (iv) Incompetency; or
 - (v) Willful neglect of duty.
- (2) Before removing an individual, the county board shall send the individual a copy of the charges against him and give him an opportunity within 10 days to request a hearing.
- (3) If the individual requests a hearing within the 10-day period:
 - (I) The county board promptly shall hold a hearing, but a hearing may not be set within 10 days after the county board sends the individual a notice of the hearing; and
 - (ii) The individual shall have an opportunity to be heard before the county board, in person or by counsel, and to bring witnesses to the hearing.
- (4) The individual may appeal from the decision of the county board to the State Board.

STANDARD OF REVIEW

Because this appeal involves the dismissal of a certificated employee pursuant to §6-202 of the Education Article, the State Board shall exercise its independent judgment on the record before it in determining whether to sustain the dismissal. COMAR 13A.01.05.03F(1) and (2). The local board has the burden of proof by a preponderance of the evidence. COMAR 13A.01.05.03F(3).

The State Board referred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify, or remand the ALJ's Proposed Decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications, or amendments to the Proposed Decision. *See* Md. Code Ann., State Gov't § 10-216. In reviewing the ALJ's Proposed Decision, the State Board must give deference to the ALJ's demeanor based witness credibility findings unless there are strong

reasons present that support rejecting such assessments. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

EXCEPTIONS TO THE ALJ'S PROPOSED DECISION

Due Process Claims

Appellant argues generally that she was terminated without due process. The ALJ found no due process violations.

In response to Appellant's claim that she was not provided with notice of the charges against her prior to her termination, the ALJ noted that Appellant refused to attend the March 25, 2004 meeting with labor relations, the purpose of which was to discuss reports of Appellant's insubordination and incompetence and provide her a forum in which to respond to the charges. The ALJ concluded that Appellant's actions resulted in a waiver of her right to notice and opportunity to be heard prior to her termination. Nevertheless, the ALJ indicated that Appellant was thereafter afforded an opportunity to be heard on the charges through a full evidentiary hearing before a hearing examiner and review of the recommendation for termination by the local board. *See* ALJ Proposed Decision at pp. 15 – 16. Any alleged procedural violations of § 6-202 were fully cured by the full evidentiary hearing before the hearing examiner and the ALJ. *See West & Bethea v. Board of Commissioners of Baltimore City*, 7 Op. MSBE 500 (1996) (failure to hold conference within ten days was cured by the *de novo* administrative hearing on merits before the local board); *Harrison v. Somerset County Board of Education*, 7 Op. MSBE 391 (1996) (failure to grant conference with superintendent or his representative in timely fashion was cured by local board's full evidentiary hearing on appeal).

As for Appellant's claims of delay in the termination process, the ALJ found that there was no substantial delay in the process. The time frames are as follows: the CEO recommended termination and placed Appellant on leave without pay status on March 26, 2004; Appellant filed an appeal with the local board on or about April 1, 2004; the local board referred the matter to a hearing examiner on or about April 29, 2004; the hearing examiner conducted a hearing on June 10, 2004; the hearing examiner issued recommendations to the local board on November 24, 2004; the local board heard oral argument on March 10, 2005; the local board issued its Order terminating Appellant on April 7, 2005. Even if you were to find a delay in the local board's process, there does not appear to be any prejudice to the Appellant given that there is substantial evidence supporting the termination.

Use of Hearsay Evidence

Appellant maintains that the ALJ should not have considered hearsay evidence regarding student grade changes and complaints from parents. The proceedings in this case consisted of a hearing before an administrative body which is not bound by the strict rules of evidence and in which hearsay evidence is admissible. *See, e.g., Travers v. Baltimore Police Dep't*, 115 Md.

App. 395, 408 (1996); *Kade v. Charles H. Hickey Sch.*, 80 Md. App. 721, 725 (1989); *Eichberg v. Maryland Bd. of Pharm.*, 50 Md. App. 189, 192-193 (1981). The statute and regulation governing the admissibility of evidence during OAH proceedings specify that evidence may not be excluded solely on the basis that it is hearsay. Md. Code Ann., State Gov't § 10-213(c) and COMAR 28.02.01.18C. Nevertheless, evidence admitted should be probative to the issues in the case. Md. Code Ann., State Gov't 10-213(b) and COMAR 28.02.01.18B.

Appellant does not cite to any specific pages of the transcript of proceedings before the ALJ or local hearing examiner to which she objects. Thus, it is difficult for us to ascertain what particular testimony Appellant believes should not have been considered. The testimony as described by Appellant in her exceptions appears to be non-hearsay testimony. In order to resolve the hearsay issue, however, you may want to ask Appellant to cite to particular transcript pages for review.

Miscellaneous Issues

Appellant makes a myriad of other claims which are not set forth in exception format and appear more as statements regarding her treatment by the school administration. These appear to be issues that Appellant has previously argued before the local hearing examiner and the ALJ as reasons that she should not be terminated. For example, Appellant maintains that her classes were constantly interrupted by school personnel who were delivering memoranda to her and that there was a two month delay in restoring phone service to her classroom in order to discourage her from calling the office to have unruly students escorted out of class.

Although the ALJ did not address each of these issues in turn, the ALJ extensively reviewed all of the evidence presented in the case and considered the arguments of the parties before finding that the local board met its burden in demonstrating that it appropriately terminated Appellant from her position for incompetency and insubordination.

CONCLUSION

For all the reasons stated, the proposed decision of the Administrative Law Judge is adopted as final and, thus, the decision of the local board is affirmed.

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April 26, 2006